

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN ASSEMBLY JUNE 16, 2011

**SENATE BILL**

**No. 217**

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**Introduced by Senator Vargas**

February 9, 2011

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An act to amend Section ~~22013~~ 10166.05 of the Business and Professions Code, and to amend Sections 22109.1 and 50141 of, and to add Section 22065 to, the Financial Code, relating to mortgage loan originators.

LEGISLATIVE COUNSEL'S DIGEST

SB 217, as amended, Vargas. ~~California Finance Lenders Law: exemptions; mortgage~~ Mortgage loan originators. Originators: licensure.

(1) Existing law provides for the licensure and regulation of mortgage loan originators, as defined, by the Commissioner of Corporations under the California Finance Lenders Law and the California Residential Mortgage Lending Act. Existing law requires a real estate license endorsement by the Real Estate Commissioner under the Real Estate Law for a real estate licensee to engage in the business of a mortgage loan originator. Existing law prohibits the issuance of a mortgage loan originator license or a license endorsement to act as a mortgage loan originator if the applicant for a license or license endorsement has been convicted of, or pled guilty or nolo contendere to, a felony during the 7-year period preceding the date of the application for licensing or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

*This bill would provide that an expunged or pardoned felony conviction does not require denial of a license or license endorsement but would authorize the consideration of the underlying crime, facts, or circumstances of the expunged or pardoned felony conviction when determining whether to issue a license or license endorsement, as specified.*

**Existing**

~~(2) Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers and mortgage loan originators, as defined, by the Commissioner of Corporations. Existing law exempts from the provisions of the California Finance Lenders Law specified persons and entities, including any person doing business under any law of any state or of the United States relating to banks, trust companies, savings and loan associations, and insurance premium finance agencies. A willful violation of the California Finance Lenders Law is a crime.~~

~~This bill would exempt from the definition of a mortgage loan originator, under the California Finance Lenders Law, an individual who acts as a mortgage loan originator for 5 or fewer residential mortgage loans during a calendar year, if specified requirements are met. The bill would also authorize a person exempt from the provisions of the California Finance Lenders Law to apply to the commissioner Commissioner of Corporations for an exempt company registration for the purpose of sponsoring one or more individuals required to be licensed as mortgage loan originators under the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) if specified requirements are met, including that the mortgage loan originator is covered under an exclusive written contract with, and originates mortgage loans solely on behalf of, the exempt person. The bill would require an exempt person to comply with all rules and orders that the commissioner deems necessary to ensure compliance with the federal SAFE Act and would require an exempt person to pay an annual registration fee established by the commissioner.~~

~~Because a willful violation of these requirements under the California Finance Lenders Law would be a crime, this bill would impose a state-mandated local program.~~

**The**

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 22013 of the Financial Code is amended~~  
2     ~~to read:~~

3     ~~22013. (a) “Mortgage loan originator” means an individual~~  
4     ~~who, for compensation or gain, or in the expectation of~~  
5     ~~compensation or gain, takes a residential mortgage loan application~~  
6     ~~or offers or negotiates terms of a residential mortgage loan.~~

7     ~~(b) Mortgage loan originator does not include any of the~~  
8     ~~following:~~

9     ~~(1) An individual who performs purely administrative or clerical~~  
10    ~~tasks on behalf of a person meeting the definition of a mortgage~~  
11    ~~loan originator, except as provided in subdivision (c) of Section~~  
12    ~~22014. The term “administrative or clerical tasks” means the~~  
13    ~~receipt, collection, and distribution of information common for~~  
14    ~~the processing or underwriting of a loan in the mortgage industry~~  
15    ~~and communication with a consumer to obtain information~~  
16    ~~necessary for the processing or underwriting of a residential~~  
17    ~~mortgage loan, to the extent that the communication does not~~  
18    ~~include offering or negotiating loan rates or terms, or counseling~~  
19    ~~consumers about residential mortgage loan rates or terms.~~

20    ~~(2) An individual who solely renegotiates terms for existing~~  
21    ~~mortgage loans held or serviced by his or her employer and who~~  
22    ~~does not otherwise act as a mortgage loan originator, unless the~~  
23    ~~United States Department of Housing and Urban Development or~~  
24    ~~a court of competent jurisdiction determines that the SAFE Act~~  
25    ~~requires such an employee to be licensed as a mortgage loan~~  
26    ~~originator under state laws implementing the SAFE Act.~~

27    ~~(3) An individual that is solely involved in extensions of credit~~  
28    ~~relating to timeshare plans, as that term is defined in Section~~  
29    ~~101(53D) of Title 11 of the United States Code.~~

30    ~~(4) An individual licensed as a mortgage loan originator pursuant~~  
31    ~~to the provisions of Article 2.1 (commencing with Section~~  
32    ~~10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and~~  
33    ~~Professions Code and the SAFE Act.~~

~~(5) (A) An individual who acts as a mortgage loan originator for five or fewer residential mortgage loans during a calendar year shall not be deemed a mortgage loan originator and shall not be required to obtain a mortgage loan originator license from the commissioner if all of the following requirements are met:~~

~~(i) The individual acts as a mortgage loan originator on behalf of a single licensee.~~

~~(ii) The licensee on whose behalf the individual acts brokers the loans exclusively to a single depository institution.~~

~~(iii) Before authorizing the individual to originate mortgage loans on its behalf, the licensee submits the name of the individual to the commissioner; agrees in writing, on a form acceptable to the commissioner, to be accountable for the actions of the individual in connection with the loan origination; and provides any other information to the commissioner about the individual that the commissioner may request.~~

~~(B) Any licensee that becomes aware of an individual who is originating residential mortgage loans on its behalf and who has exceeded the five loan per calendar year threshold shall immediately notify the commissioner and shall direct the individual to cease engaging in mortgage loan originator activity, until he or she obtains a mortgage loan originator license.~~

~~(C) Notwithstanding Sections 22004 and 22059, a licensee may broker loans to a depository institution pursuant to this paragraph.~~

~~(D) The exclusion from licensing provided by this paragraph shall not apply if the Director of the federal Consumer Financial Protection Bureau or a court of competent jurisdiction makes a final and specific determination that this paragraph does not comply with the requirements of Section 1508 of the SAFE Act (12 U.S.C. Sec. 5107).~~

~~(e) “Registered mortgage loan originator” means any individual who is all of the following:~~

~~(1) Meets the definition of mortgage loan originator.~~

~~(2) Is an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration.~~

~~(3) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.~~

1     ~~(d) “Loan processor or underwriter” means an individual who~~  
2     ~~performs clerical or support duties as an employee at the direction~~  
3     ~~of, and subject to the supervision and instruction of, a mortgage~~  
4     ~~loan originator licensed by the state or a registered mortgage loan~~  
5     ~~originator.~~

6     *SECTION 1. Section 10166.05 of the Business and Professions*  
7     *Code is amended to read:*

8     10166.05. Notwithstanding any other provision of law, the  
9     commissioner shall not issue a license endorsement to act as a  
10    mortgage loan originator to an applicant unless the commissioner  
11    makes all of the following findings:

12    (a) The applicant has never had a mortgage loan originator  
13    license revoked in any governmental jurisdiction, except that a  
14    subsequent formal vacation of a revocation shall not be deemed a  
15    revocation.

16    (b) *(1)* The applicant has not been convicted of, or pled guilty  
17    or nolo contendere to, a felony in a domestic, foreign, or military  
18    court, ~~under either of the following conditions, however, any~~  
19    ~~pardon of a conviction shall not be considered a conviction for~~  
20    ~~purposes of this subdivision:~~

21    ~~(1) During court during the seven-year seven-year period~~  
22    ~~preceding the date of the application for licensing.~~

23    ~~(2) At licensing, or at any time preceding the date of application,~~  
24    ~~if the felony involved an act of fraud, dishonesty, a breach of trust,~~  
25    ~~or money laundering. Whether a particular crime is classified as~~  
26    ~~a felony shall be determined by the law of the jurisdiction in which~~  
27    ~~an individual is convicted.~~

28    ~~(2) For purposes of this subdivision, an expunged or pardoned~~  
29    ~~felony conviction shall not require denial of an application.~~  
30    ~~However, the commissioner may consider the underlying crime,~~  
31    ~~facts, or circumstances of an expunged or pardoned felony~~  
32    ~~conviction when determining the eligibility of an applicant for~~  
33    ~~licensure under this subdivision or subdivision (c).~~

34    (c) The applicant has demonstrated such financial responsibility,  
35    character, and general fitness as to command the confidence of  
36    the community and warrant a determination that the mortgage loan  
37    originator will operate honestly, fairly, and efficiently within the  
38    purposes of the article.

39    (d) The applicant has complied with the education and written  
40    testing requirements in Section 10166.06.

1 SEC. 2. Section 22065 is added to the Financial Code, to read:

2 22065. (a) Persons not subject to this division may apply to  
3 the commissioner for an exempt company registration for the  
4 purpose of sponsoring one or more individuals required to be  
5 licensed as mortgage loan originators pursuant to the *federal* SAFE  
6 Act. A mortgage loan originator eligible for licensure pursuant to  
7 this section shall meet all of the following requirements:

8 (1) Be covered under an exclusive written contract with, and  
9 originate mortgage loans solely on behalf of, that exempt person.

10 (2) Be a licensed insurance producer in good standing under  
11 Article 3 (commencing with Section 1631) of Chapter 5 of Part 2  
12 of Division 1 of the Insurance Code.

13 (3) Hold a license from the Insurance Commissioner as an  
14 insurance producer for an insurer that controls, is controlled by,  
15 or is under common control with that exempt person.

16 (b) An exempt person shall comply with all rules and orders  
17 that the commissioner deems necessary to ensure compliance with  
18 the *federal* SAFE Act and shall pay an annual registration fee  
19 established by the commissioner.

20 SEC. 3. Section 22109.1 of the Financial Code is amended to  
21 read:

22 22109.1. (a) The commissioner shall deny an application for  
23 a mortgage loan originator license unless the commissioner makes,  
24 at a minimum, the following findings:

25 (1) The applicant has never had a mortgage loan originator  
26 license revoked in any governmental jurisdiction, except that a  
27 subsequent formal vacation of a revocation shall not be deemed a  
28 revocation.

29 (2) (A) The applicant has not been convicted of, or pled guilty  
30 or nolo contendere to, a felony in a domestic, foreign, or military  
31 court, as follows:

32 ~~(A) During court during the seven-year period preceding the~~  
33 ~~date of the application for licensing and registration.~~

34 ~~(B) At registration, or at any time preceding the date of~~  
35 ~~application, if the felony involved an act of fraud, dishonesty, or~~  
36 ~~a breach of trust, or money laundering. Whether a particular crime~~  
37 ~~is classified as a felony shall be determined by the law of the~~  
38 ~~jurisdiction in which an individual is convicted.~~

39 ~~(C) Provided that any pardon of a conviction shall not be a~~  
40 ~~conviction for purposes of this paragraph.~~

1 (B) For purposes of this paragraph, an expunged or pardoned  
2 felony conviction shall not require denial of an application.  
3 However, the commissioner may consider the underlying crime,  
4 facts, or circumstances of an expunged or pardoned felony  
5 conviction when determining the eligibility of an applicant for  
6 licensure under this paragraph or paragraph (3).

7 (3) The applicant has demonstrated such financial responsibility,  
8 character, and general fitness as to command the confidence of  
9 the community and to warrant a determination that the mortgage  
10 loan originator will operate honestly, fairly, and efficiently within  
11 the purposes of this division.

12 (4) The applicant has completed the prelicensing education  
13 requirement described in Section 22109.2.

14 (5) The applicant has passed a written test that meets the test  
15 requirement described in Section 22109.3.

16 (6) The applicant is employed by, and subject to the supervision  
17 of, a finance lender or broker that has obtained a license from the  
18 commissioner pursuant to this division.

19 (b) Before denying a license under this section, the  
20 commissioner shall proceed as prescribed by Chapter 5  
21 (commencing with Section 11500) of Part 1 of Division 3 of Title  
22 2 of the Government Code and shall have all the powers granted  
23 under that chapter.

24 SEC. 4. Section 50141 of the Financial Code is amended to  
25 read:

26 50141. (a) The commissioner shall deny an application for a  
27 mortgage loan originator license unless the commissioner makes  
28 at a minimum the following findings:

29 (1) The applicant has never had a mortgage loan originator  
30 license revoked in any governmental jurisdiction, except that a  
31 subsequent formal vacation or set aside of such revocation shall  
32 not be deemed a revocation.

33 (2) (A) The applicant has not been convicted of, or pled guilty  
34 or nolo contendere to, a felony in a domestic, foreign, or military  
35 court during the seven-year period preceding the date of the  
36 application for licensing and registration, or at any time preceding  
37 the date of application, if such felony involved an act of fraud,  
38 dishonesty, a breach of trust, or money laundering. ~~For purposes~~  
39 ~~of this paragraph, any pardon of a conviction shall not constitute~~  
40 ~~a conviction. Whether a particular crime is classified as a felony~~

1 *shall be determined by the law of the jurisdiction in which an*  
2 *individual is convicted.*

3 *(B) For purposes of this paragraph, an expunged or pardoned*  
4 *felony conviction shall not require denial of an application.*  
5 *However, the commissioner may consider the underlying crime,*  
6 *facts, or circumstances of an expunged or pardoned felony*  
7 *conviction when determining the eligibility of an applicant for*  
8 *licensure under this paragraph or paragraph (3).*

9 (3) The applicant has demonstrated such financial responsibility,  
10 character, and general fitness as to command the confidence of  
11 the community and to warrant a determination that the mortgage  
12 loan originator will operate honestly, fairly, and efficiently within  
13 the purposes of this division.

14 (4) The applicant has completed the prelicensing education  
15 requirement described in Section 50142.

16 (5) The applicant has passed a written test that meets the test  
17 requirements described in Section 50143.

18 (6) The applicant is employed by, and subject to the supervision  
19 of, a residential mortgage lender or servicer that has obtained a  
20 license from the commissioner pursuant to this division.

21 (7) The surety bond of the residential mortgage lender or servicer  
22 employing the applicant covers the activities of the applicant and  
23 meets the requirements of Section 50205.

24 (b) Before denying a license under this section, the  
25 commissioner shall proceed as prescribed by Chapter 5  
26 (commencing with Section 11500) of Part 1 of Division 3 of Title  
27 2 of the Government Code and shall have all the powers granted  
28 under that chapter.

29 ~~SEC. 3.~~

30 *SEC. 5.* No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 the only costs that may be incurred by a local agency or school  
33 district will be incurred because this act creates a new crime or  
34 infraction, eliminates a crime or infraction, or changes the penalty  
35 for a crime or infraction, within the meaning of Section 17556 of  
36 the Government Code, or changes the definition of a crime within  
37 the meaning of Section 6 of Article XIII B of the California  
38 Constitution.